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SIPDIS
SENSITIVE

STATE FOR EEB/IFD/OIA AND L/CID
COMMERCE FOR 4331/MAC/WH/MCAMERON
USTR FOR BHARMAN AND MCARRILLO

E.O. 12958: N/A
TAGS: [EINV](#) [KIDE](#) [PGOV](#) [CASC](#) [OPIC](#) [USTR](#) [ETRD](#) [PE](#)

SUBJECT: PERU 2009 REPORT ON INVESTMENT DISPUTES AND EXPROPRIATION
CLAIMS UPDATE

REF: STATE 49477

SENSITIVE BUT UNCLASSIFIED, HANDLE ACCORDINGLY

¶1. (U) The following is post's submission for the State Department's
2009 527 Report.

¶2. (U) The US Government is aware of six (6) claims that may be
outstanding against the Government of Peru.

a. Claimant A

b. 1999

c. Claimant A is involved in a dispute with the GOP regarding the
refund of value-added tax on gold exported from Peru between May
1997 and February 1999. SUNAT, the tax agency, withheld roughly
\$600,000 that claimant contends it is entitled to receive as a tax
refund. The Tax Court issued a decision in Claimant A's case to
await the resolution of a parallel criminal case against Claimant
A's local general manager. The company appealed this decision,
arguing that the Tax Court had all the necessary information to make
a ruling and that such a position creates undue delay. The Superior
Court, which heard the appeal, issued a 3-2 decision against the
Claimant. The Claimant appealed the case to the Constitutional
Court, which also refrained from issuing a resolution until after
the criminal case concludes.

The criminal case against Claimant A's local general manager is part
of a larger case involving numerous defendants from several
companies. The appeals-level prosecutor recommended that Claimant
A's executive be excluded from the case. The national penal court
agreed in November 2007, ruling that the case against the Claimant's
local manager and six others was without merit. The SUNAT
prosecutor has appealed this ruling.

Embassy's last contact with Claimant A was July 30, 2008.

a. Claimant B

b. 2001

c. Peruvian tax agency SUNAT served Claimant B in November 2001 with
a \$49 million tax assessment. SUNAT claimed that Claimant's local
power company under previous ownership underpaid taxes from
1996-1999 due to improper use of depreciation after the
privatization of the power company. Claimant purchased the
privatized company in 1999. The power company was privately audited
from 1996-1999, and its financial statements for those years were
approved by GOP representatives on the company's board and by the
GOP privatization agency.

In December 2001, Claimant filed an administrative claim against the tax assessment. In September 2002, SUNAT upheld its assessment but reduced the amount to \$43 million. In late September 2002, Claimant appealed this decision to the Tax Court. The pending assessment against Claimant now totals more than \$50 million with interest. The Tax Court issued in May 2004 a decision disagreeing with the method of depreciation employed by the company and asking SUNAT to recalculate its assessment. Claimant argues that SUNAT's reassessment violates a Legal and Tax Stability Agreement between Claimant and the GOP.

Claimant B and the GOP submitted this case to international arbitration under the auspices of the World Bank's International Center for Settlement of Investment Disputes (ICSID) in October 2003. The ICSID constituted a tribunal in June 2004, and closed the proceedings (all submissions finalized) on June 19, 2008. On August 18, 2008, the tribunal rendered its award, attaching to the award two partial dissenting opinions by two of the arbitrators. On December 24, 2008, the Acting Secretary-General registered an application for the institution of annulment proceedings and notified the parties of the provisional stay of enforcement of the award. On March 4, 2009, the ICSID constituted an ad hoc committee. The parties filed submissions on the provisional stay of enforcement of the award on April 17, 2009. The ad hoc committee held its first session at The Hague on April 27, 2009. The case remains pending.

Post is in regular contact with Claimant B.

a. Claimant C

b. 2003

c. In December 2003, tax agency SUNAT assessed Claimant C \$9 million in fines and reduced its income tax credit for 1998 from 32 million Soles (Peruvian currency) to 9 million Soles. Sunat based the assessment on its claim that Claimant's 1997 merger with a local metal refining company had no economic substance. Claimant believes they correctly completed the merger and that Claimant received applicable tax benefits in strict compliance with existing Peruvian law. SUNAT subsequently assessed the company with additional fines for the 1999-2003 tax years, increasing Claimant's tax liability to over \$180 million. In August 2007, Claimant won the claim for the 1998 tax year, totaling \$17 million. Claimant expressed gratitude for Embassy and US Congress assistance. The 1999-2003 claims are working their way through the tax court, and Claimant is confident they will also be resolved favorably based on the precedent set by the 1998 case.

SUNAT also claims that Claimant owes \$100 million in VAT for holdings certificates for 1999-2004 related to exports of goods. SUNAT considers the holding certificates as domestic sales, but Claimant maintains the certificates are a financing mechanism given that all goods were exported (hence not subject to VAT). The Tax Court divided these claims into three separate cases. The three cases are pending with the Tax Court.

Post is in regular contact with Claimant C, last meeting on May 28, 2009, although the tax issue was not discussed.

a. Claimant D

b. 1970

c. Following receipt of a letter from Congressman Silvestre Reyes (Texas) concerning Claimant D's case in December 1999, Embassy received a letter from Claimant in February 2000 and met with claimant at his request while he was visiting Peru in May 2000. According to Claimant, in about 1970, Peru's military government expropriated his farm as part of a general land reform act that expropriated farms over 250 hectares. Claimant's farm, however, is less than 200 hectares. The government issued Claimant compensation bonds, which have since become worthless as the result of hyperinflation. Claimant asserts that, because he believed the expropriation to be illegal and because he was living in the United States at the time, he made no attempt to redeem the bonds.

Claimant has provided no estimate of the land's current value, maintaining that his goal is to have it returned.

Claimant began efforts to recover his farm in 1999. At Embassy's suggestion, he joined an association composed of others whose land was expropriated. Claimant has also contracted legal counsel in Peru, but has not separately pursued remedies through the Peruvian courts.

Embassy Officers met with Claimant in 2000, and were in contact with Claimant on one occasion in 2001. Embassy officers have requested details on the expropriated property, a timeline of events related to the expropriation, and any legal analysis supporting the Claimant's assertion that the expropriation did not comply with Peruvian law. To date, Embassy has not received this information.

Post has had no contact with Claimant D since July 2001.

a. Claimant E

b. 1976

c. According to Claimant E, pursuant to the Agrarian Reform Law, the Peruvian Agriculture Ministry (MinAg) in 1976 transferred about 60 hectares of land he had purchased in 1964 to the Comunidad Campesina de Oyon (CCO), located in the district and province of Oyon in the department of Lima. MinAg allegedly did so without his knowledge and without notifying him of the action.

Claimant hired a lawyer to undertake administrative procedures for recovering his land in 1976, but the claim was lost, and in May 2000 MinAg found that his claim had no merit. He appealed administratively and also received a letter in November 2000 from the Huaura Superior Court indicating that the GOP's General Office of Agrarian Reform had mistaken him for another landholder with a similar name. Simultaneously, Claimant filed suit against local mining firm Buenaventura, which Claimant asserts took advantage of the title dispute to cut down all of the trees on what was wooded land. Claimant also says that the dispute led to threats against him from the CCO, and that terrorist activity in the area prevented him from returning to his land until 1990.

Claimant sent Embassy documents in November 2000 related to the alleged expropriation of his land. At Embassy's request Claimant provided a brief letter laying out the facts of the case in March 2001. Embassy forwarded this letter to MinAg, with a request that it be given appropriate attention. The Ambassador received a letter dated May 6, 2002 from MinAg, confirming that the land had been transferred under the agrarian reform program to the CCO on June 19, 1976, and that title had been confirmed to the CCO on November 8, 1982. MinAg asserts that, as a result, Claimant only has a right to claim the fair market value of the land, and must pursue this through the courts.

Claimant E has not contacted the Embassy for assistance since 2002.

a. Claimant F

b. 2000

c. Claimant provides telecommunications services over the world's first integrated global internet protocol based network and has deployed a sub-sea fiber optic network around South America. The submarine fiber and transmission equipment sit on the ocean floor more than 12 nautical miles from shore, except where a cable system lands in a country to connect that country to the worldwide network.

Tax agency SUNAT conducted an assessment of Claimant's assets. Per SUNAT's request, Claimant paid customs duties and VAT on all goods imported into Peru, including for equipment extending 12 nautical miles from Peru's coast. In November 2000, SUNAT re-assessed Claimant's property and imposed \$43 million in additional duties and VAT, based on an assessment of equipment located between 12 and 200 nautical miles from the coast of Peru. Claimant has appealed the reassessment.

Claimant F has not contacted the Embassy for assistance since 2005.

End text.

12. (SBU) As far as post knows, Claimants have not signed Privacy Act Waivers. The names of the Claimants are as follows:

A - Princeton Dover
B - Duke Energy
C - Doe Run
D - Jaime Muro-Crousillat (Amcit)
E - Manuel Vizurraga (Amcit)
F - Global Crossing
MCKINLEY